IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2738 OF 2004.

State of Maharashtra & anr. ... Petitioners
Versus.
Rajesh Ganpatrao Mohite & others. ... Respondents.

Shri A.S.Gadkari, A.P.P.for the Petitioners.

Shri M.S.Mohite for the Respondents Nos.1 to 4.

CORAM : ABHAY S. OKA, J.

DATED : 16th June, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. The challenge in this petition is to the order dated 10th May 2004 passed by the learned Judicial Magistrate First Class as well as the order passed by the learned Additional Sessions Judge in Revision preferred by the Petitioners against the said order dated 10th May 2004. The challenge is also to the show cause notice issued by the learned trial Judge to the Range Forest Officer calling upon him to show cause why action under the Contempt of Court Act should not be initiated against him.

2. I have considered the rival submission. The order dated 10th May 2005 was passed on an application made by the Respondent No.1 for return of the articles and properties. The application was filed under section 451 of the Code of Criminal Procedure, 1973. The Revision

Application preferred by the Applicant against the said order has been dismissed by the learned Additional Sessions Judge. There are concurrent findings recorded in so far as the application under section 451 filed by the Respondent No.1 is concerned. The learned Additional Sessions Judge held that simply because of the seizure of the property that has been used for committing offence under the Indian Forest Act 1927 or Wildlife (Protection) Act, 1972, it does not become the property of the Government automatically. It was observed that in this case till the Accused are convicted after the trial, the property will not vest in the State Government. There is no reason to interfere with the order of return of the articles and properties.

3. The show cause notice dated 1st September 2004 is issued to the Range Forest Officer alleging that there is no compliance with the order passed by the learned Judicial Magistrate. In my view it is for the concerned Officer to file a reply and to show cause why action could not be initiated. The learned A.P.P. appearing for the State stated that the reply is already filed. The petition cannot be entertained against such a show cause notice. Whether there is a prima facie breach of the order and whether the breach is deliberate or not are the questions which can be decided by the learned Magistrate after considering the reply filed by the Range Forest Officer and after hearing the Range Forest

Officer who is Petitioner No.2 herein.

4. Hence the following order is passed:

(i) The petition is dismissed with no order as to costs

(ii) The learned Judicial Magistrate First Class will consider the reply filed by the Petitioner No.2 to the showcause notice dated 1st September 2004 and after giving opportunity of being heard to the Petitioner No.2, the learned trial Magistrate will pass appropriate order without being influenced by the confirmation of the impugned order.

(iii) All contentions of the parties so far as the show cause notice is concerned are kept open.

(iv) The parties and the concerned Court to act on an authenticated copy of this order.

Judge.